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EX PARTE OR LATE FILED

October 16, 1997

Hand Delivered

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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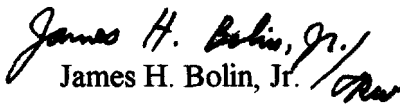
Re: **U S West Petition for Declaratory Ruling Regarding Provision of National
Directory Assistance, CC Docket No. 97-172**

Dear Mr. Caton:

Pursuant to a request by the Commission's staff, this letter transmits copies of two unpublished decisions by the United States District Court for the District of Columbia which AT&T cited in its reply comments in the above-captioned proceedings.

Two copies of this Notice are being submitted to the Secretary of the Commission in accordance with Section 1.1206 the Commission's rules.

Sincerely,


James H. Bolin, Jr.

cc : A. Wright, Esq. (via hand delivery)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN ELECTRIC COMPANY, INC.,
AND AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,

Defendants.

Civil Action No. 82-0192

FILED

OCT 30 1984

JAMES E. DAVEY, Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY, et al.,

Defendants.

Misc. No. 82-0025 (PI)

MEMORANDUM ORDER

The US West Operating Companies (Northwestern Bell, Mountain Bell, and Pacific Northwest Bell) filed the instant motion seeking permission to provide directory assistance and operator intercept services^{1/} to independent telephone companies within

^{1/} Operator intercept services are the interception of calls to non-working numbers in order to provide the caller with information concerning the status of the called number.

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the States in which they operate as well as to persons calling over interexchange facilities from areas outside these States.^{2/}

The US West Operating Companies have provided directory assistance and operator intercept services for many years. The independent telephone company areas that US West serves are generally small and widely dispersed, making it economically impracticable for these companies themselves to provide such services. Due to the present configuration of the network,^{3/} US West is unable to identify the origin of a call except on the basis of Numbering Plan Area (NPA), and calls from a Bell Operating Company and those from an independent telephone company are therefore indistinguishable to the operator. Beyond that, US West states that only through expensive reengineering of the network could its Operating Companies differentiate between inter-LATA and intra-LATA directory assistance and intercept calls within an NPA, and that if these companies are precluded

^{2/} US West characterized its motion as one for declaratory relief or, in the alternative, for a waiver of section II(D)(1) of the decree (if the Court finds that directory assistance to independent telephone company customers is an information service, or in some cases, an inter-LATA service, or both). With respect to that issue, see the Court's Memorandum of February 6, 1984 at 6 n.9.

^{3/} Currently, several operator services are consolidated into regional "hubs" which serve more than one State and more than one LATA.

from offering directory assistance, a very substantial dislocation of service would ensue not only for customers of the independent telephone companies but also for long distance telephone callers who seek to obtain such assistance.^{4/}

Although the Department of Justice disagrees with US West's contention that the provision of directory assistance to independent telephone company customers is not an information service,^{5/} it does not object to a waiver which would permit the US West Operating Companies to provide directory assistance directly to these customers on an NPA-wide basis.^{6/} The Department does oppose, however, any waiver which would permit the Operating Companies to provide directory assistance directly over their own facilities in those cases where the number sought is outside the NPA (and the LATA) of the caller, except to the extent that such service was provided to an independent telephone company on or before December 31, 1983. Instead, the Department suggests that where this is feasible, directory assistance calls to foreign

^{4/} US West notes that the independent telephone companies are always free to make alternative arrangements for directory assistance.

^{5/} See note 2, supra. The Department of Justice takes no position, however, on whether operator intercept service is an information service. AT&T states that such service appears to be permitted by the decree. AT&T's Response Brief at 2 n.*. Without deciding this issue, the Court finds that US West may provide the intercept services it requests.

^{6/} In those cases where an NPA overlaps LATA boundaries, the Operating Company could provide the requested telephone number regardless of whether the caller was making an inter-LATA or intra-LATA call.

NPAs should be identified and routed separately to the facilities of interexchange carriers pursuant to exchange access tariffs -- a practice, the Department alleges is already used by many Bell Operating Companies.

Similarly, AT&T -- the only other party to file a response -- does not oppose a waiver permitting the US West Operating Companies to provide inter-LATA directory assistance to customers of independent telephone companies who are unable to receive directory assistance from their own exchanges and who were receiving such service from US West prior to divestiture. AT&T further contends that the Court should deny US West's request to provide directory assistance to persons calling over interexchange carrier facilities from states not served by the US West Operating Companies without prejudice unless and until US West is able to demonstrate that the provision of such service is necessary to avoid public inconvenience and that it would not significantly harm competition.

The arguments of the Department of Justice and of AT&T are well taken. AT&T is currently providing (and other interexchange carriers can similarly provide) inter-LATA directory assistance by using directory information provided by US West pursuant to its access tariffs. Thus, callers who are outside not only the NPA (and LATAs),^{7/} but also outside the States served by US West

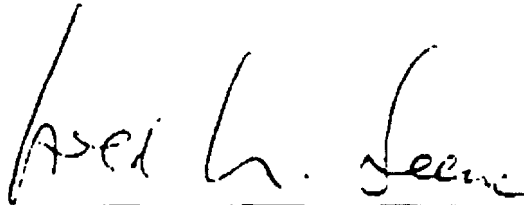
^{7/} US West has made the requisite showing for the provision of directory assistance to callers living within the same NPA served by US West Operating Companies. As for the provision of intra-LATA directory assistance, it is clearly permitted by the decree.

would presumably not be inconvenienced if directory assistance is provided over the facilities of an interexchange carrier rather than those of the US West Operating Companies. However, if US West can show that this assumption is incorrect, its request can still be granted.

Accordingly, it is this 30th day of October, 1984,

ORDERED That the US West Operating Companies may provide directory assistance to independent telephone companies within the States served by US West and to other callers on an NPA-wide basis, and it is further

ORDERED That the US West Operating Companies may provide operator intercept services for independent telephone companies within the States served by US West and to persons calling over interexchange facilities from areas outside the States served by US West.


Harold H. Greene
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN ELECTRIC COMPANY,
INC., et al.,

Defendants.

Civil Action No. 82-0192
(NHG)

FILED

FEB 02 1989

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MEMORANDUM AND ORDER

After careful consideration of the civil enforcement Consent Order ("Consent Order") entered into by the Department of Justice and U S West, and of the numerous pleadings filed regarding U S West's lack of compliance with section II(D) and section V of the Modification of Final Judgment, the Court has decided to sign the order. It has been reluctant to do so for several reasons. First, the Court is not persuaded that U S West's violations of section II(D) and section V of the AT&T consent decree ("decree"); its disregard of the opinion of a member of its legal department that one-call services violated the decree; and its false statements to the Department of Justice that it was no longer providing the prohibited services are attributable

(N)

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solely to lax procedures for ensuring decree compliance. Second, the Court does not wish to send a message that lack of compliance with the decree will be handled by this Court and the Department of Justice with an understanding smile and the requirement that the offender set up compliance procedures that should have been in place long ago.

On the other hand, the Court has long been mindful of the inadequacy of criminal contempt procedures for dealing with most decree violations.¹ Some decree violations could be defended successfully, or at least interminably, on the grounds that the decree provision was not sufficiently clear, the company's legal interpretation of its obligations was reasonable, it took steps to ensure compliance, and on and on.

It is essentially on this basis that the Department elected to resort to civil enforcement procedures.² The Consent Order, as submitted, requires the institution of detailed compliance procedures, including the establishment of a Decree Committee that will evaluate U S West's ongoing and proposed business activities to ensure that they comply

¹ United States v. Western Electric Co., 552 F. Supp. 131, 217 (D.D.C. 1982).

² Memorandum of the United States in Support of the Motion and Stipulation for Entry of Civil Enforcement Consent Order at 11-13 (Nov. 20, 1987).

with sections II(D) and V of the decree.³ In addition, it provides for imposition of civil fines by the Court for any violation of sections II(D) or V of the decree that continue after the completion of the first compliance review and for any violation of the Consent Order. These fines may under the Consent Order be imposed without any finding of willfulness; a finding that the relevant decree provisions were violated will support the imposition of such fines.

The provision in the Consent Order for the use of civil fines is beneficial in that it clarifies any question regarding the exercise of this power by the Court⁴ and, in so doing, creates an expeditious procedure for the handling of decree violations. Moreover, as indicated above, this provision does not eliminate the option of the imposition of criminal contempt sanctions, or any other relief provided for by law, where the Court finds such relief warranted. On

³ A finding by the Decree Committee that a company practice does not violate the decree is not a defense to any enforcement action brought either under the Consent Order or under the mechanisms provided by the decree itself. See ¶ H of the Consent Order.

⁴ 552 F. Supp. at 217.

these bases, the Court concludes that the Consent Order is, in the end, satisfactory and in the public interest.⁵

Finally, a related motion filed by One Call Concepts for sanctions against U S West and/or Northwestern Bell Telephone Company is also pending before the Court. A third party may seek relief in this Court for decree violations only if it demonstrates that the Department of Justice has refused to enforce the decree in bad faith.⁶ The Court has reviewed the Department of Justice's enforcement efforts in this case and it does not find evidence of bad faith. The Department made persistent efforts to force U S West to discontinue its one-call services, and it discontinued its investigation only after it had set a firm deadline for the cessation of such services and had received assurances from U S West that it had complied.⁷ The Department reopened its investigation

⁵ The Court today approves only the Consent Order. In its memorandum in support of the Consent Order, U S West suggests that it may be able to provide One Call services to any telephone company under the decree. See Memorandum of U S West, Inc. in Support of Motion and Stipulation for Entry of Civil Enforcement Consent Order, and Reply to Report of the Department of Justice on U S West's Compliance with Decree at 7-10 (Dec. 4, 1987). This interpretation is not a part of the Consent Order, and it is not accepted by this Court.

⁶ United States v. Eastern Electric Co., 578 F. Supp. 677, 679-80 (D.D.C. 1983).

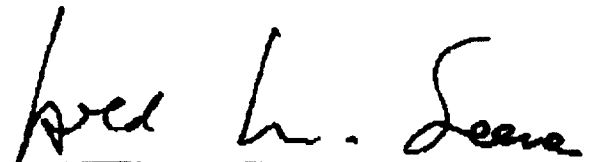
⁷ Response of the United States to the Motion of One Call Concepts at 5-9 (Nov. 20, 1987); Reply of One Call Concepts at 2-3 (Dec. 4, 1987).

once it received evidence that continuing enforcement problems existed, and it now seeks enforcement by means of a civil consent order. The Court concludes that in this instance the Department's efforts to bring about compliance were sufficient. In the absence of evidence of bad faith, One Call Concepts' motion for sanctions must be denied.

For the reasons detailed above, it is this 1st day of February, 1989

ORDERED that the motion and stipulation for entry of civil enforcement consent order filed by the Department of Justice and U S West be and it is hereby granted; and it is further

ORDERED that the motion of One Call Concepts for sanctions against U S West and/or Northwestern Bell Telephone Company be and it is hereby denied.



HAROLD H. GREENE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN ELECTRIC COMPANY, et al.,

Defendants.

Civil Action No. 82-0192 (H...)

FILED

FEB 02 1992

CIVIL ENFORCEMENT CONSENT ORDER

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

WHEREAS, the Department of Justice has conducted an investigation of U S WEST, Inc. ("U S WEST"), to determine the facts and circumstances as to U S WEST's compliance with section II(D) of the Modification of Final Judgment with respect to its provision of one-call notification services and section V of the Modification of Final Judgment; and

WHEREAS, the United States of America and U S WEST have consented to entry of this Civil Enforcement Consent Order pursuant to section VII of the Modification of Final Judgment without trial or adjudication of any issue of fact or law herein and without this Civil Enforcement Consent Order constituting an admission by or any evidence against any party with respect to any issue;

N)

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NOW, THEREFORE, upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED:

I.

DEFINITIONS

As used in this Civil Enforcement Consent Order:

- A. "Business activities" means the provision of any product or service by U S WEST to persons other than U S WEST.
- B. "Modification of Final Judgment" means the consent decree entered by the United States District Court for the District of Columbia on August 24, 1982 in United States v. United States v. Western Electric Co., Civil Action No. 82-0192 (D.D.C.).
- C. "Modification of Final Judgment Orders" means this Civil Enforcement Consent Order and all other orders issued by the United States District Court for the District of Columbia pursuant to section VII or section VIII(C) of the Modification of Final Judgment relating to section II(D) or section V of the Modification of Final Judgment that are binding on U S WEST.

but not including any such order while it is stayed pending review by a higher court.

D. "One-call notification service" means a service that notifies any person of a planned excavation or the existence of underground utility facilities in a geographic area where an excavation is planned.

E. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

F. "U S WEST" means U S WEST, Inc., and any entity directly or indirectly owned or controlled by U S WEST, Inc., or affiliated through substantial common ownership.

II.

APPLICABILITY AND EFFECT

The provisions of this Civil Enforcement Consent Order shall be binding upon U S WEST, its affiliates, successors and assigns, officers, agents, servants, employees, and attorneys, and in addition shall bind those persons in active concert or participation with U S WEST who receive actual notice of this Civil Enforcement Consent Order.

III.

ONE-CALL NOTIFICATION SERVICE

U S WEST shall not provide directly or through any affiliated enterprise any one-call notification service to any person other than U S WEST anywhere in the United States, unless and until the information services prohibition set forth in section II(D) of the Modification of Final Judgment is removed in its entirety or is modified to permit U S WEST to provide information content of the type involved in a one-call notification service, or unless and until U S WEST obtains a waiver of the Modification of Final Judgment, pursuant to section VIII(C), authorizing U S WEST to provide one-call notification services. This Civil Enforcement Consent Order shall not prohibit U S WEST from providing information to any person regarding U S WEST's own facilities or U S WEST's own planned excavations or from receiving information for its own use from any person regarding that person's own facilities or proposed excavations.

IV.

DECREE COMMITTEE

A. U S WEST shall establish a Decree Committee consisting of at least four senior attorneys who shall be designated by and shall report directly to the General Counsel of U S WEST.

C. No later than one hundred and twenty (120) days after the entry of this Civil Enforcement Consent Order, the Decree Committee shall complete an audit of all of U S WEST's ongoing business activities and shall determine whether such business activities comply with section II(D) of the Modification of Final Judgment and all Modification of Final Judgment Orders. The Department of Justice may grant U S WEST an extension of time of no more than sixty (60) days to complete said audit upon a showing satisfactory to the Department of Justice that U S WEST is proceeding diligently and expeditiously in its review of its business activities. No later than thirty (30) days after the completion of the Decree Committee's audit of U S WEST's ongoing business activities required by Paragraph

IV(C), U S WEST shall submit a report to the Department of Justice stating whether any and all violations of section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order disclosed by its audit have been terminated.

D. If, during the audit required by Paragraph IV(C) or thereafter, the Decree Committee determines that any ongoing business activity violates section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order, the Decree Committee shall inform the appropriate management officials of its determination, and the Decree Committee and such management officials shall take all necessary steps to ensure that said business activity is terminated or modified to comply with section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order.

E. If, during the audit required by Paragraph IV(C) or thereafter, any member of the Decree Committee learns of any ongoing business activity that he or she has reason to believe violates section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order, the Decree Committee shall determine whether that business activity constitutes a violation within fifteen (15) days after that member has reason to believe that such business activity constitutes a violation. Unless any such violation found is cured within forty-five (45) days after the Decree Committee

determines that the ongoing business activity constitutes such a violation, U S WEST shall submit a written report, under oath, to the Department of Justice. Such written report shall contain, at a minimum, a description of the ongoing business activity and when the business activity began, an identification of the relevant provisions of the Modification of Final Judgment or Modification of Final Judgment Order, a description of the relevant legal issues under the Modification of Final Judgment or Modification of Final Judgment Order, a statement of when the violation first came to the attention of the Decree Committee, and a statement of the steps that U S WEST has taken or plans to take to comply with the Modification of Final Judgment or Modification of Final Judgment Order.

F. If, during the audit required by Paragraph IV(C) or thereafter, the Decree Committee determines that any proposed business activity would violate section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order, the Decree Committee shall inform the appropriate U S WEST management officials of its determination, and the Decree Committee and such management officials shall take all necessary steps to prevent U S WEST from initiating the proposed activity. For each such business activity, the Decree Committee shall prepare a written memorandum containing, at a minimum, a description of the proposed business activity, an identification of the relevant provisions of the

Modification of Final Judgment or Modification of Final Judgment Order, a description of the relevant legal issues under the Modification of Final Judgment or Modification of Final Judgment Order, a statement of the legal and factual basis for the conclusion of the Decree Committee that the proposed business activity would violate section II(D) of the Modification of Final Judgment or Modification of Final Judgment Order, and a statement of the actions taken by the Decree Committee and management officials to prevent U S WEST from initiating the proposed activity. All such written memoranda shall be retained in the files of the Decree Committee for a period of at least ten (10) years.

G. If, during the audit required by Paragraph IV(C) or thereafter, the Decree Committee determines that a proposed business activity would not violate or that an ongoing business activity does not violate section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order, the Decree Committee shall prepare a written memorandum containing, at a minimum, a description of the proposed or ongoing business activity, an identification of the relevant provisions of the Modification of Final Judgment or Modification of Final Judgment Order, a description of the legal issues under the Modification of Final Judgment or Modification of Final Judgment Order, and a statement of the legal and factual basis for the conclusion of the Decree Committee that the proposed

business activity or ongoing business activity complies with section II(D) of the Modification of Final Judgment and all Modification of Final Judgment Orders. All such written memoranda shall be retained in the files of the Decree Committee for a period of at least ten (10) years.

H. Except as to a charge that U S WEST has violated section IV of this Civil Enforcement Consent Order, U S WEST's compliance with section IV of this Civil Enforcement Consent Order shall not bar the United States from seeking or the Court from imposing civil penalties against U S WEST pursuant to Paragraphs VII(A) and VII(B) of this Civil Enforcement Consent Order or any other relief available under section VII of the Modification of Final Judgment or any Modification of Final Judgment Order or any other applicable provision of law for any violation of the Modification of Final Judgment or any Modification of Final Judgment Order.

V.

MODIFICATION OF FINAL JUDGMENT COMPLIANCE PROVISIONS

No later than ten (10) days after a person begins performance of his or her duties as a new officer or management employee, U S WEST shall provide that person with a written directive and obtain an executed certificate as required by section V of the Modification of Final Judgment. This requirement extends only to employees of U S West as defined in Paragraph I(F) hereof.

VI.

CIVIL ENFORCEMENT CONSENT ORDER
COMPLIANCE PROVISIONS

A. No later than thirty (30) days after the entry of this Civil Enforcement Consent Order, U S WEST shall distribute to each officer and management employee of U S WEST the following materials:

1. A copy of this Civil Enforcement Consent Order and a written directive setting forth U S WEST's policy regarding compliance with the Civil Enforcement Consent Order;
2. A description of the procedures to be followed to comply with this Civil Enforcement Consent Order, including identification of the members of the Decree Committee and the procedures to be followed by the Decree Committee; and
3. An admonition that non-compliance with this Civil Enforcement Consent Order will result, in every case, in disciplinary action, which may include dismissal, and that such non-compliance may result in conviction for contempt of court and imprisonment and/or fine.

D. U S WEST shall take disciplinary action against any person under its control who refuses or fails to comply with the Modification of Final Judgment or any Modification of Final Judgment Order. A written report of such disciplinary action shall be provided to the Decree Committee within thirty (30) days from the date of such action.

VII.

CIVIL PENALTIES FOR VIOLATIONS

A. If, after the completion of the Decree Committee's audit of ongoing business activities pursuant to Paragraph IV(C) of this Civil Enforcement Consent Order, U S WEST violates or continues to violate section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order insofar as such order relates to section II(D) of the Modification of Final Judgment, the Court may impose a civil fine for such violation in such amount as may be reasonable in light of all surrounding circumstances. Such a fine may be levied for each separate violation of section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order.

B. If, after the entry of this Civil Enforcement Consent Order, U S WEST violates or continues to violate this Civil Enforcement Consent Order, section V of the Modification of

Final Judgment, or any Modification of Final Judgment Order insofar as such order relates to section V of the Modification of Final Judgment, the Court may impose a civil fine for such violation in such amount as may be reasonable in light of all surrounding circumstances. Such a fine may be levied for each separate violation of this Civil Enforcement Consent Order, section V of the Modification of Final Judgment, or any Modification of Final Judgment Order.

VIII.

OTHER RELIEF PRESERVED

Nothing in this Civil Enforcement Consent Order shall bar the United States from seeking or the Court from imposing against U S WEST or any person, in addition to or in lieu of the civil penalties provided for in Paragraphs VII(A) and VII(B) above, any other relief available under section VII of the Modification of Final Judgment or any Modification of Final Judgment Order or under any other applicable provision of law for violation of the Modification of Final Judgment or any Modification of Final Judgment Order, including this Civil Enforcement Consent Order.

IX.

VISITORIAL PROVISIONS

A. The monitoring and visitorial provisions of section VI of the Modification of Final Judgment shall apply to the activities of U S WEST mandated under this Civil Enforcement Consent Order.

B. U S WEST shall not assert against the Department of Justice any claim of privilege with respect to requests by the Department of Justice for any minutes of the Decree Committee meetings or any other documents maintained by the Decree Committee except minutes and documents (or portions thereof) relating solely to violations that have been terminated or corrected during the Decree Committee's audit of U S WEST's ongoing business activities under Paragraph IV(C) or solely to violations that are terminated within forty-five (45) days after the Decree Committee determines that an ongoing business activity violates section II(D) of the Modification of Final Judgment or any Modification of Final Judgment Order, as described in Paragraph IV(E). Any material disclosed to the Department of Justice under this Paragraph shall be treated as if the material had been produced pursuant to section VI of the Modification of Final Judgment. Nothing in this paragraph is intended to prevent U S WEST from asserting any otherwise valid